

Based on the record compiled to date, the Board finds claimant has failed to prove his current condition is directly traceable to his employment with respondent. The opinions of the most credible medical experts, namely claimant's treating neurosurgeon, John D. Ebeling, M.D., and the court-ordered independent medical examiner, orthopedic surgeon, Dale D. Dalenberg, M.D., support a conclusion that claimant's current low back condition

is a natural progression of a preexisting degenerative condition and not the result of claimant's single traumatic incident at work on November 6, 2001.

Claimant has a long history of spinal problems causing symptoms in his back and legs. After comparing claimant's MRI scans from August 2002 and November 2001, Dr. Ebeling acknowledged that there was a difference which he described as a new disk herniation just below the L4-5 level on the left. But Dr. Ebeling did not relate the degenerative changes at the L4-5 and L5-S1 levels to claimant's November 6, 2001 accident. Rather, Dr. Ebeling considered claimant's condition to be a continuation of his preexisting problems.

"I reviewed the MRI scan with him. I think most of his pain is probably coming from the L4-5 interval. Neurologically he looks to be unchanged from our previous visits and examinations. I don't think he has any lumbar radiculopathy. His problem is mechanical lumbar pain due to these degenerative changes, primarily at the L4-5 level."<sup>1</sup>

"You asked me a specific question regarding the changes in the MRI scan of November 23, 2001, and the MRI scan of August 27, 2002, and correlating this with his injury of November 6, 2001. I cannot say, with any degree of certainty, when this herniation occurred and how much of that is due to the November 6, 2001, injury."<sup>2</sup>

On November 22, 2002, Judge Benedict wrote Dr. Dalenberg for another opinion:

A question has arisen as to Mr. Warner's condition and I am asking that you provide a court ordered independent medical evaluation.

Mr. Warner's original accident was on November 6, 2001. An MRI from November 23, 2001 disclosed a bulging disc at L4-5. A subsequent MRI from August 27, 2002 disclosed a herniated disc at L4-5. By copy of this letter I am requesting the attorneys to provide you with copies of these reports.

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<sup>1</sup> P.H. Trans., Cl. Ex. 8 and Resp. Ex. A at 4 (Nov. 13, 2002).

<sup>2</sup> P.H. Trans., Cl. Ex. 2 and Resp. Ex. A at 1 (Nov. 13, 2002).

The question is whether it would be more probable than not for Mr. Warner's bulging disc to progress to a herniated disc in nine months without some intervening accident.<sup>3</sup>

Although the question posed to Dr. Dalenberg by Judge Benedict presupposed that the bulging disc observed on the first MRI was caused by or related to the work-related accident, Dr. Dalenberg obviously believed that no such correlation could be assumed and, in fact, was of the contrary opinion.

The 11-23-01 MRI report is in keeping with a degenerative L4-5 disk. The disk bulging, interspace narrowing, and desiccation of disk material referred to by the radiologist are degenerative changes. **Those imaging changes would not have been specifically a result of the 11-6-01 accident, that accident having occurred only 17 days prior to the MRI.**

The 8-27-02 MRI report is also in keeping with degenerative disk changes at L4-5. The radiologist reading the study, who refers to the fact that he reviewed both studies simultaneously, does comment that the disk protrusion at L4-5 is greater than what was seen on the first study. This is in keeping with a progression of the degenerative disease at that level. **Since the claimant was not exhibiting the disk herniation on the 11-23-01 MRI, it is not reasonable to call it an acute disk herniation as a result of the accident.** Unless there has been an intervening accident that we don't know about, this disk herniation on the 8-27-02 study is most likely a progression of the pre-existent degenerative disease.

One of the common misconceptions out there is that all "disk herniations" are traumatic. The fact is that the vast majority of disk herniations are atraumatic or degenerative with only a small number of them being acute disk herniations secondary to any particular traumatic episode.

You asked whether it would be more probable than not for Mr. Warner's bulging disk to progress to a herniated disk in nine months without some intervening accident. I agree with that statement. It would be more probable than not for Mr. Warner's bulging disk to progress to a herniated disk in the time period stated without some intervening accident. **Furthermore, the herniated disk seen on 8-27-02 was most likely not an acute herniated disk secondary to the accident, since it was not present on the study of 11-23-01.** Furthermore, the degenerative changes at L4-5 pre-existed the

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<sup>3</sup> Letter to Dale Dahlenberg, M.D., from Judge Bryce D. Benedict (Nov. 22, 2002).

accident, because those changes take a great deal of time to develop and did not develop within the 17 days from the accident and the first MRI.<sup>4</sup>

Neither Dr. Ebeling nor Dr. Dalenberg relate the claimant's present condition to his work-related accident. Instead, the disk herniation more likely occurred as a result of claimant's preexisting and ongoing degenerative disk disease. Although the accident at work may have temporarily aggravated claimant's low back condition, claimant has failed to prove a direct causal connection between his November 6, 2001 accident and the herniated disk shown on the August 27, 2002 MRI study.

**WHEREFORE**, the Administrative Law Judge's Order dated January 15, 2003 is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May 2003.

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BOARD MEMBER

c: George H. Pearson, Attorney for Claimant  
John F. Carpinelli, Attorney for Respondent and Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Director, Division of Workers Compensation

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<sup>4</sup> Letter to Bryce D. Benedict from Dale D. Dalenberg, M.D. (Jan. 5, 2003) (emphasis added).